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Customer No. 23990



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of : David B. Whitten, et al.
Serial No. : 10/796,428
Filing Date : March 9, 2004
Title : METHOD AND SYSTEM FOR ACCOMPLISHING
PRODUCT DETECTION
Group Art : 3629
Examiner : (Not Yet Assigned)

MAIL STOP AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO MAKE SPECIAL

Pursuant to 37 C.F.R. § 1.102(d) and MPEP § 708.02, Applicant respectfully petitions for advancement of the above-identified application out of turn for examination. A check for the \$130.00 fee set forth in 37 C.F.R. § 1.17(h) is enclosed.

Pursuant to MPEP § 708.02 (II), p. 700-122 (8th ed. rev. 1 February 2003): (a) there is an infringing device or product actually on the market, Automatic Merchandising Systems Inc.'s vending machines with the Sensit II vend sense mechanism; (b) the undersigned has made a rigid comparison of the infringing device or product with the claims of the application and, in the

undersigned's opinion, at least some of the claims are unquestionably infringed; and (c) a careful and thorough search of the prior art has been made. Copies of the references deemed most closely related are attached to the Information Disclosure Statement being filed herewith.

The undersigned has made a rigid comparison of a device actually on the market with the allowed claims in the application and, in the opinion of the undersigned, at least one allowed claim is unquestionably infringed. At least pending claims 16–19 and newly-added claims 40–46 and 53–61, as amended or added by the Substitute Preliminary Amendment being filed herewith, are unquestionably infringed by the Automatic Merchandising Systems Inc. (“AMS”) Glass Front Merchandiser Models 35" and 39" Snack and Models VCB and VCF vending machines with the Sensit II vend sense mechanism, as documented by the associated Illustrated Parts Manual, L0076, REV. B (including particularly pages 2-26 and 2-27) and Illustrated Parts Manual, L0072, REV. C (including particularly pages 1-26 and 1-27), respectively.

The undersigned has both made and caused to be made a careful and thorough search of the prior art, and has a good knowledge of the pertinent prior art. In the opinion of the undersigned, the most pertinent prior art is either already of record in the above-identified application by virtue of having been cited in the parent application (see MPEP § 609, p. 600-119) and/or is being made of record by the concurrently filed Information Disclosure Statement: US 4,252,250 issued February 24, 1981 to *Toth*; and US 6,384,402 issued May 7, 2002 to *Hair, III et al.* *Toth*, commonly owned with the subject application, is distinguishable over independent claims 16, 40 and 53–57 as teaching product detection at a product receiving position (or “delivery station”), not along a delivery path

between a product storage position and a product receiving position. *Hair, III et al* is distinguishable, as argued during prosecution of the parent application, as teaching only use of continuous planes of diffuse light reflected by a collector from the source to the detector, requiring measurement in changes of relative magnitude of the light received by a detector, rather than use of a plurality of discrete light beams such that interruption of at least one light beam may be employed to detect product delivery.

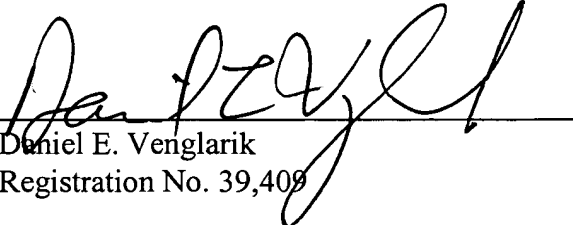
Accordingly, Applicants respectfully request that the subject application be made special and advanced out of order for immediate examination.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at dvenglarik@davismunck.com.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 6-15-04


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